

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA COURT OF APPEALS  
#c6-93-231

In the Matter of  
Scott H Wenger,

Relator,

Vs

Commissioner of  
Jobs and Training,

Respondent

FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND DECISION

The above-entitled matter came on before Administrative Law Judge Peter C. Erickson at 9:30 a.m. on Wednesday, February 17, 1993 in the Stearns County Courthouse, St. Cloud, Minnesota. The record closed at the conclusion of the hearing, Scott H. Wenger, the Relator herein, 710 South Fourteenth Street, #24, St. Cloud, Minnesota 56301, appeared and testified on his own behalf. There were no other appearances at this proceeding

ProCedural History

On January 7, 1993, Administrative Law Judge Jon L, Lunde issued a Decision which denied Scott Wenger's appeal of a decision by the Division of Vocational Rehabilitation Services to not recognize Mr, Wenger's self-employment goal as an appropriate goal in his Individualized Written Rehabilitation Program (IWRP), On January 25, 1993, the Assistant Commissioner of the Minnesota Department of Jobs and Training, Norena A. Hale, issued a final agency decision affirming the decision made by Judge Lunde to deny Mr. Wenger's appeal. Commissioner Hale stated in her decision that Mr. Wenger had two options: (1) to appeal the decision to the Minnesota Court of Appeals; or (2) accept the decision and continue to pursue his vocational rehabilitation program. The second option stated that no services could be provided concerning Mr. Wenger's rehabilitation program "unless it is based on an IWRP that is mutually agreed upon". Subsequently, Mr. Wenger filed a Petition for Writ of Certiorari with the Minnesota Court of Appeals dated February 3, 1993. Attached to the Petition was an affidavit of Mr. Wenger filed pursuant to Minn. Stat. 563.01 requesting that he be permitted to proceed 'in forma pauperis'. The affidavit stated that Mr. Wenger received assistance from

Social Security in the form of social security disability payments; that he received food stamps; that he was indigent; and that he was financially unable to pay court costs, fees, security for costs, and costs of preparing and copying written transcripts of the hearing,

On February 5, 1993, the Chief Judge of the Minnesota Court of Appeals, Paul H. Anderson, issued an Order requiring, in part, the following

On or before February 22, 1993, Assistant Commissioner Hale or her delegatee, acting as a special referee of the Minnesota Court of Appeals, shall submit and certify to this court appropriate findings and determinations. The assistant commissioner or her delegatee may convene a hearing to take evidence on this matter, if the current record is inadequate to make findings.

The court specified the issues and findings which were required and the process to make those findings as follows:

Before directing the State of Minnesota to pay the expenses of relator in obtaining the record and reproducing the briefs, it is essential that determinations be made whether (a) the action is of a frivolous nature and (b) the relator is able to pay the expenses of appeal,

Assistant Commissioner Norena Hale, who rendered the final decision in this matter, or her delegatee in the Office of Administrative Hearings, is believed to be a suitable person to act as a referee of the Minnesota Court of Appeals for the purpose of making findings on these matters

Pursuant to the above-Order, the Division of Rehabilitation Services (DRS) contacted the Office of Administrative Hearings and requested that an Administrative Law Judge conduct a hearing to take evidence on the issues set forth in the court's Order and make findings and determinations on those issues. Consequently, this hearing was conducted by the undersigned and evidence was taken upon which the findings and determinations herein are based

in addition to the record already made in this proceeding,

#### NOTICE

The Judge reads the Order from the Court of Appeals as directing that this decision be a final decision on the issues presented. Consequently, this decision will be served on Mr. Wenger, Assistant Commissioner Hale, and the Chief Judge of the Minnesota Court of Appeals,

Based upon all of the proceedings herein, the Administrative Law Judge makes the following-

#### FINDINGS OF FACT

Relator's Ability to Pay the Expenses of this Appeal

1. Scott Wenger's total monthly income consists of social security disability income in the amount of \$781. In addition, Mr. Wenger currently receives food stamps in the amount of \$28 per month, however, beginning March 1, 1993, that amount will be reduced to \$13 per month

2 Mr. Wenger currently resides in Section 8 HUD subsidized housing and has a monthly rent in the amount of \$214. On January 19, 1993, Mr. Wenger



received a letter from the Director of Housing Services informing him that his lease agreement would be terminated effective February 28, 1993 based upon outstanding rent due in the amount of \$422, Mr. Wenger has not paid February rent in an additional amount of \$214. At the current time, Mr Wenger has no resources available to pay the overdue rent.

3, Mr. Wenger drives a 1986 Toyota Camry which was purchased by his mother Mr Wenger owes his mother for the purchase price of the car.

4, In addition to using his food stamps to purchase food, Mr. Wenger buys food at the food shelves and eats one meal per day at the Salvation Army.

5. Mr. Wenger pays a monthly car insurance premium of \$31.06. He currently has debts exceeding \$1,400 for repairs made to his car Mr Wenger spends approximately \$60 per month for transportation expenses

6 Mr. Wenger's utilities are included in the rent payment

7 Mr. Wenger attends two psychotherapy sessions per month for which he pays \$20 per session. Mr. Wenger has a mental disability, dysthymic disorder (depression), which is the basis for his eligibility for services from DRS.

8. Mr. Wenger has sold blood five times since November 3, 1992 in an effort to secure more income.

Whether the Action is of a Frivolous Nature

9 The findings of fact issued by Judge Lunde reveal the following,

1. In July of 1991, Mr. Wenger and a certified rehabilitation counselor, John Schlichting, prepared an IWRP which stated that Wenger's vocational goal was to obtain employment as a programmer/analyst or in a related position. Mr. Wenger had previous job experience in computer programming and had earned a bachelor of science degree in computer information systems

2, In very early 1992, Mr. Wenger told Schlichting that he was interested in investigating the possibility of a small business venture. Subsequently, Wenger decided to produce and sell motivational tapes under the name "New Age Tapes". Mr. Wenger continued in his efforts to produce and sell motivational tapes in early 1992 and discussed receiving financial support for this venture with Mr. Schlichting

3. In May, June and July of 1992, Mr. Wenger attempted to have his IWRP revised to state as a goal: "to successfully market educational, motivational, and self-help media to the general public in the U.S. and abroad." Mr. Schlichting refused to offer Mr. Wenger any rehabilitation assistance in his venture and told Mr. Wenger that his self proclaimed goal was not a viable vocational objective

4, In mid-August 1992, Mr. Wenger had completed two tapes in marketable cassette form which were titled: "The New Level", relating to linear versus non-linear thinking; and "Relaxation", relating to hypnotic induction and wealth imagery, In addition, two other tapes had been produced

on reel-to-reel "Communication", relating to personal, business and social communication; and "Self-esteem", relating to the development of healthy self-esteem. A fifth tape on problem solving was scheduled for recording on September 8. However, the tape on relaxation was plagiarized and could not be sold

5. Mr, Wenger has no training in marketing, advertising, or running a business, and he has never been self-employed.

6, Mr, Wenger has no training or expertise in motivation, communication or education. He has never published articles or given speeches on those subjects, and was unknown to the general public

7. There was no evidence offered in the record of the initial hearing to show that Mr. Wenger's proposed business venture was economically feasible or would provide him with gainful employment,

8. The hearing record does show that Mr, Wenger is employable as a computer programmer or in a similar position and may be able to retain employment in that area with ongoing counseling.

9 Mt Wenger appealed the DRS decision not to amend his IWRP to include his vocational goal of selling educational and motivational tapes and supporting him in that endeavor.

10. Judge Lunde concluded that Mr Wenger had failed to show that his proposed business venture was economically feasible or that there was a reasonable expectation that Wenger would be able to obtain and retain gainful self-employment if DRS adopted a revised IWRP containing the vocational goal proposed by Mr Wenger,

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following

#### CONCLUSIONS OF LAW

1. The Administrative Law Judge and the Assistant Commissioner for Vocational Rehabilitation of the Minnesota Department of Jobs and Training have authority in this matter pursuant to Minn. Stat. 266A.03 and 14.50 and the remand Order from the Minnesota Court of Appeals dated February 5, 1993,

2. Mr Wenger has shown that he is not able to pay the expenses of this

appeal

3. Based upon the findings made by Judge Lunde and his analysis of the issues presented, the Judge concludes that this action is of a frivolous nature.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

#### DECISION

IT IS HEREBY DETERMINED that Mr Wenger's Petition to proceed in forma pauperis is DENIED



Dated this            day of February, 1993

PETER C. ERICKSON  
Administrative law Judge

MEMORANDUM

Minn. Stat 563.01, subd. 3 sets forth standards for an individual to proceed in forma pauperis in legal actions. One criteria is that the individual is "financially unable" to pay the costs associated with the action. In this case, it is primarily the cost of transcription of the hearing which is at issue. The statute states that persons who receive public assistance are, prima facie, financially unable to pay and also persons whose annual income is not greater than 125% of the poverty guidelines established by the federal government. Mr. Wenger's receipt of social security disability income is not "public assistance" as this Judge understands that term. Also, Mr. Wenger's monthly income of \$781 is slightly more than 125% of the poverty guidelines established by the federal government (a guideline of \$6,810 multiplied by 125% equals \$8,512.50). However, Mr. Wenger is heavily in debt for medical services which he incurred as a result of his mental disability and currently has no significant resources to even pay the overdue rent on his apartment. Consequently, the Judge has concluded that Mr. Wenger does satisfy the criteria of indigency; that he is not financially able to pay the costs of this appeal.

The Judge has concluded that Mr. Wenger's proposed vocational goal of selling educational and motivational tapes, when seen in the light of his vocational experience, training and present economic and psychological condition, is hardly realistic. Judge Lunde made that determination abundantly clear in his decision issued on January 7, 1993. There was nothing in the record of the hearing conducted by Judge Lunde to suggest that Mr. Wenger's vocational goal was either economically feasible or appropriate for a person with his education and background. The Judge does not want to belittle Mr. Wenger's sincere endeavors at self-employment, however, the issue here is a realistic evaluation of an appropriate rehabilitation program which will be paid for by DRS. Mr. Wenger's action below and appeal herein have no factual

or legal basis and must, therefore, be considered frivolous.

P.C,E